

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>CHROMAGEN VISION, LLC,</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>ROGER EICHENHOLTZ, et al.,</b>	:	<b>NO. 11-2860</b>
	:	
<b>Defendants.</b>	:	

**ORDER**

AND NOW, this 27<sup>th</sup> day of August, 2012, upon consideration of Plaintiff's Motion for Default Judgment as to Debtor/Defendant Roger Eichenholtz (Docket No. 26),<sup>1</sup> Plaintiff's Motion for Default Judgment as to Roger Eichenholtz (Docket No. 33), Defendant Roger Eichenholtz's Opposition (Docket No. 34), and supplemental replies thereto (Docket Nos. 35, 37, 39, 42, 44), and following oral argument on June 6, 2012, it is hereby **ORDERED** as follows:

1. Plaintiff's Motion (Docket No. 26) is **GRANTED** as to Defendant ChromaGen USA as to Counts 2 and 3 and **DENIED** in all other respects;
2. Plaintiff's Motion (Docket No. 33) is **GRANTED** as to Defendant Roger Eichenholtz as to Counts 1, 2, and 3 and **DENIED** as to Count 4;
3. The Court holds and declares in accordance with 28 U.S.C. § 2201 that:
  - a. Neither Mr. Eichenholtz nor any entity controlled by Mr. Eichenholtz, including ChromaGen USA, holds any right, title or interest in U.S. Patent No. 6,089,712, covering the ChromaGen system (the "Patent");
  - b. Neither Mr. Eichenholtz nor any entity controlled by Mr. Eichenholtz,

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<sup>1</sup> Despite its name, this motion is actually directed at Defendants ChromaGen USA, Maxine Morgan Design, and Maxine Morgan, Inc.

including ChromaGen USA, holds any right, title or interest in U.S.

Trademark No. 76213202, covering the name “CHROMAGEN” (the “Trademark”);

- c. Neither Mr. Eichenholtz nor any entity controlled by Mr. Eichenholtz, including ChromaGen USA, holds any right, title or interest in any other intellectual property rights listed on Schedule 1.21 of the Asset Purchase Agreement attached to the Complaint (Docket No. 1) in this case as Exhibit 3;
- d. Neither Mr. Eichenholtz nor any entity controlled by Mr. Eichenholtz, including ChromaGen USA, holds any license to practice the Patent or to use the Trademark in commerce;
- e. Neither Mr. Eichenholtz nor any entity controlled by Mr. Eichenholtz, including ChromaGen USA, holds any rights under the exclusive license granted by Cantor & Nissel to Defendant ChromaGen USA by agreement dated November 3, 2005, any and all such exclusive licenses having been assigned to Plaintiff CMGN by a valid agreement to that effect dated February 15, 2007;

- 4. Accordingly, Defendant Roger Eichenholtz, his officers, agents, servants, employees, attorneys, and all persons in active concert and/or privity with him and Defendant ChromaGen USA are **RESTRAINED** and **ENJOINED** from:

- a. Holding themselves out as authorized to sell, offer for sale, or practice the following intellectual property rights (collectively, the “ChromaGen IP”):

- i. U.S. Patent No. 6,089,712
  - ii. U.S. Trademark No. 76213202
  - iii. Intellectual property rights to ChromaGen Full System, ChromaGen Teachers System, ChromaGen Contact Lens, ChromaGen Spectacle Lens, Chromagen Toric Contact Lens, Chromagen Spectacle Mirror, Extra S/V hard MAR coating, UV blocker, Bellina, Fabula, Bellina trial set, Fabula trial set, SCL Natural trial set, SCL Natural contact lens, Nissel Palette, and Nissel Prosthetic lens.
- b. Selling, offering to sell, authorizing others to sell, or otherwise practicing the ChromaGen IP; and/or
  - c. Representing to any party that ChromaGen Vision LLC is not authorized to practice the ChromaGen IP, including but not limited to any representation that ChromaGen Vision LLC is not the owner of the ChromaGen IP or that any other.
4. The surety bond in the amount of \$25,000 tendered by Plaintiff in support of the Temporary Restraining Order issued on July 1, 2011 and subsequently held over in support of the Preliminary Injunction entered on September 15, 2011 shall be **RELEASED**.

BY THE COURT:

S/Gene E.K. Pratter  
GENE E.K. PRATTER  
United States District Judge